



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (MD) No.201 of 2021

and

C.M.P (MD) No.1213 of 2021

Murugayee ... Petitioner/1st Petitioner/ 1st Plaintiff

Vs.

1.Perumayee
2.Muniyammal

... Respondents 1 & 2/Respondents 1 & 2/
Defendants 1 & 2

3.Palaniammal
4.Ilanjiyam
5.Pothumani

... Respondents 3 to 5/Petitioners 2 to 4/
Plaintiff 2 to 4

PRAYER:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order made in I.A.No.188 of 2020 in O.S.No.100 of 2002 on the file of the Principal District Munsif, Vedasanthur, Dindigul District, dated 04.12.2020 and allow this civil revision petition.

For Petitioner	: Mr.S.Gokulraj
For R1	: No appearance
For R2	: Mr.B.Azhagesh

ORDER

The petitioner/first plaintiff is before this Court challenging the order passed by the learned Principal District Munsif, Vedasanthur, dismissing the application filed by the plaintiffs for amending the plaint to include the second item of the properties and to declare the sale deed dated 03.07.2000 as null and void.

2.The facts in brief preceding the filing of this petition are as follows:-

(i) The plaintiff had filed a suit in O.S.No.100 of 2000 on the file of the learned Principal District Munsif, Vedasanthur, for partition of the plaintiffs 4/5 share in the suit schedule property. The suit schedule property consisted of one item namely 0.70 cents in survey No. 221/2 of Vedukampatti Village, Vedasanthur Taluk.



(ii) The case of the plaintiffs is that the said property was the ancestral property of one Palaniyappakonar, the father of the plaintiffs and the defendants. The suit was decreed by judgment and decree dated 17.08.2010 by the learned District Munsif, Vedasanthur. The said judgment was taken up on appeal by the second defendant in A.S.No. 06 of 2012 on the file Sub Court, Vedasanthur. Along with appeal, the second defendant had filed I.A.No.11 of 2012 to receive additional evidence. The said appeal was allowed and remitted back to the trial Court, since the Court had permitted the second defendant to file an additional written statement. The suit was thereafter remitted to the District Munsif Court, Vedasanthur and the plaintiff had filed reply statement to the additional written statement.

(iii) For the first time, in the additional written statement the second defendant had taken out the plea that the suit in O.S.No.100 of 2002 was hit by partial partition, since the plaintiffs had failed to include survey No. 231/1d which also belongs to their father. In view of the above additional written statement, the plaintiffs had filed I.A.No.188 of 2020 to amend the plaint, that is the subject matter of the present revision petition.

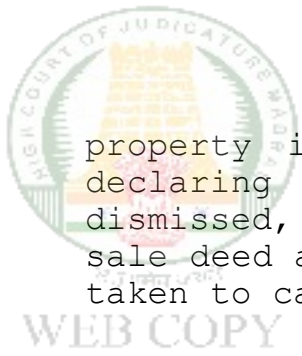
(iv) The second defendant had filed a counter *inter alia* contending that the amendment is taken out with the delay of over 18 years and therefore, it cannot be allowed.

(v) The learned Principal District Munsif, Vedasanthur, by his order dated 04.12.2020 has dismissed the said application. Challenging the same, the plaintiff is before this Court.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the second respondent and perused the materials placed on record.

4. Admittedly, the defendants had not taken out a plea of partial partition in the original written statement filed by them. However, the defendants have stated about the sale deed dated 03.07.2000 in the written statement which was filed on 06.11.2020 after the remand. The amendment that is now sought for is to include the prayer to declare the sale deed dated 03.07.2000 executed by the first defendant in favour of the second defendant as null and void and to include the survey No. 223/1D measuring an extent of 0.53.50 ares in Vadukampadi village as the second item of the property.

5. Since the issue of partial partition has been taken for the first time in the additional written statement, the amendment insofar it relates to the inclusion of the second item of the



property is allowed. However, the amendment with reference to declaring the sale deed dated 03.07.2000 as null and void is dismissed, since the plaintiffs had been put on notice about the sale deed as early as in the year 2002 itself and no steps have been taken to carry out the necessary amendment.

6.In the result, this Civil Revision Petition is partly allowed and I.A.No.188 of 2020 on the file of the Principal District Munsif, Vedasanthur, Dindigul District, is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cp

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Principal District Munsif,
Vedasanthur.
Dindigul District

+1 CC to M/s.S. GOKULRAJ, Advocate (SR-34678[F] dated 16/11/2021)

+1 CC to M/s.B. ALAGESH, Advocate (SR-34658[F] dated 16/11/2021)

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MGJ(10.12.2021) 3P 4C